

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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6 HERBERT MOREIRA-BROWN,
7 Plaintiff,

8 vs.

9 LAS VEGAS REVIEW JOURNAL, INC., *et al.*,
10 Defendants.
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2:16-cv-02002-JAD-VCF

ORDER

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14 Before the Court are Defendants April Ademiluyi, Las Vegas Review Journal, Inc. and Carri Geer
15 Thevenot's Motions to Stay (ECF Nos. 60 and 62) and Motion to Expedite the Motion to Stay Discovery
16 (ECF No. 70).

17 **LEGAL STANDARD**

18 When evaluating a motion to stay discovery while a dispositive motion is pending, the court
19 initially considers the goal of Federal Rule of Civil Procedure 1. The guiding premise of the Rules is that
20 the Rules "should be construed and administered to secure the just, speedy, and inexpensive determination
21 of every action." FED. R. CIV. P. 1. It needs no citation of authority to recognize that discovery is
22 expensive. The Supreme Court has long mandated that trial courts should resolve civil matters fairly but
23 without undue cost. *Brown Shoe Co. v. United States*, 370 U.S. 294, 306 (1962). This directive is echoed
24 by Rule 26, which instructs the court to balance the expense of discovery against its likely benefit. *See*
25 FED.R.CIV.P. 26(B)(2)(iii).

1 Consistent with the Supreme Court’s mandate that trial courts should balance fairness and cost,
2 the Rules do not provide for automatic or blanket stays of discovery when a potentially dispositive motion
3 is pending. *Skellerup Indus. Ltd. v. City of Los Angeles*, 163 F.R.D. 598, 600–01 (C.D. Cal. 1995).
4 Pursuant to Federal Rule of Civil Procedure 26(c)(1), “[t]he court may, for good cause, issue an order to
5 protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”
6 Whether to grant a stay is within the discretion of the court. *Munoz–Santana v. U.S. I.N.S.*, 742 F.2d 561,
7 562 (9th Cir. 1984). The party seeking the protective order, however, has the burden “to ‘show good cause’
8 by demonstrating harm or prejudice that will result from the discovery.” FED. R. CIV. P. 26(c)(1).
9 Satisfying the “good cause” obligation is a challenging task. A party seeking “a stay of discovery carries
10 the heavy burden of making a ‘strong showing’ why discovery should be denied.” *Gray v. First Winthrop*
11 *Corp.*, 133 F.R.D. 39, 40 (N.D.Cal.1990) (citing *Blankenship v. Hearst Corp.* 519 F.2d 418, 429 (9th Cir.
12 1975)).

13 Generally, imposing a stay of discovery pending a motion to dismiss is permissible if there are no
14 factual issues raised by the motion to dismiss, discovery is not required to address the issues raised by the
15 motion to dismiss, and the court is “convinced” that the plaintiff is unable to state a claim for relief. *Rae*
16 *v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984); *White v. Am. Tobacco Co.*, 125 F.R.D. 508 (D. Nev.
17 1989) (citing *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) cert. denied, 455 U.S. 942 (1982).
18 Typical situations in which staying discovery pending a ruling on a dispositive motion are appropriate
19 would be where the dispositive motion raises issues of jurisdiction, venue, or immunity. *TradeBay, LLC*
20 *v. Ebay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011).

21 Courts in the District of Nevada apply a two-part test when evaluating whether a discovery stay
22 should be imposed. *Id.* (citations omitted). First, the pending motion must be potentially dispositive of the
23 entire case or at least the issue on which discovery is sought. *Id.* Second, the court must determine whether
24 the pending motion to dismiss can be decided without additional discovery. *Id.* When applying this test,
25 the court must take a “preliminary peek” at the merits of the pending dispositive motion to assess whether

1 a stay is warranted. *Id.* The purpose of the “preliminary peek” is not to prejudge the outcome of the motion
2 to dismiss. Rather, the court’s role is to evaluate the propriety of an order staying or limiting discovery
3 with the goal of accomplishing the objectives of Rule 1.

4 **DISCUSSION**

5 Under Local Rule 7-2(d), The failure of an opposing party to file points and authorities in response
6 to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a
7 consent to the granting of the motion. No opposition has been filed and the time to file an opposition has
8 passed.

9 Additionally, good cause exists to grant Defendants Motions to stay. Here, Ademiluyi’s Motion
10 to Dismiss (ECF No. 34) raises issues of personal jurisdiction which warrants a stay of discovery. After
11 a “preliminary peek” and in light of the goals of Rule 1 to “secure the just, speedy, and inexpensive”
12 determination of all cases, the Court finds that Las Vegas Review Journal, Inc. and Carri Geer Thevenot’s
13 Motion to Dismiss (ECF No. 7) has merit and may resolve all issues in controversy and demonstrates
14 good cause to stay discovery. The parties will not need to incur unnecessary discovery costs during the
15 pendency of the motion to dismiss. *See* FED. R. CIV. P. 1.

16 Accordingly, and for good cause shown,

17 IT IS HEREBY ORDERED that the Defendants April Ademiluyi, Las Vegas Review Journal, Inc.
18 and Carri Geer Thevenot’s Motions to Stay (ECF Nos. 60 and 62) are hereby GRANTED. In the event
19 resolution of Defendants’ motions to dismiss (ECF Nos. 7 and 34) does not result in the disposition of this
20 case, the parties must file a new joint discovery plan within 21 days of the issuance of the order deciding
21 that motion.

22 IT IS FURTHER ORDERED that the Motion to Expedite the Motion to Stay Discovery (ECF No.
23 70) is DENIED as MOOT. IT IS FURTHER ORDERED that Plaintiff’s Second Motion for an Order
24 Compelling Defendants to Identify Jane Doe (ECF No. 66) is DENIED without prejudice. Plaintiff may
25 refile his motion after the resolution of the motion to dismiss, if the case is still pending before this court.

1 IT IS FURTHER ORDERED that a status hearing is scheduled for 11:00 a.m., October 23, 2017,
2 in courtroom 3D.

3 DATED this 15th day of June, 2017.

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5 CAM FERENBACH
6 UNITED STATES MAGISTRATE JUDGE
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